

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Timothy Joseph McKinney, #294063,)
a/k/a Timothy Joseph McKinney, #287844)
) **Plaintiff,**)
) **v.**)
) **Katie Sieber,**)
) **Defendant** .)
_____)

Case No. 7:23-cv-729-RMG

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge (Dkt. No. 8) recommending that the case should be dismissed without prejudice, without leave to amend, and without issuance and service of process. The Magistrate Judge recommends the dismissal of this action because there is no potential liability of the Defendant, Plaintiff’s public defender, for liability under 42 U.S.C. § 1983 because a public defender does not act under color of state or federal law. (*Id.* at 3-4).

Plaintiff was given notice of his right to file objections to the R & R within 14 days of service and that failure to timely file specific written objections would waive the right to file an appeal of the judgment of the District Court based upon the R & R. (*Id.* at 8). Plaintiff has filed no objections to the R & R.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

After reviewing the full record in this matter, the Court finds the Magistrate Judge ably addressed the issues presented and correctly concluded that this action should be dismissed without prejudice, without leave to amend, and without issuance or service of process. The Court adopts the R & R (Dkt. No. 8) as the order of the Court and dismisses this action without prejudice.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
United States District Judge

March 22, 2023
Charleston, South Carolina